

**MATTHEW S. SCHULTZ**

Matthew S. Schultz (MSS 1518)

CONNELL FOLEY LLP

888 7<sup>th</sup> Avenue, Suite 3401

New York, New York 10106

(212) 262-2390

Attorneys for Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc.

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOSE A. MENDEZ,

Plaintiff,

v.

MILBANK 2723 WEBB, LLC, MILBANK VENTURES, INC. AND TGY REALTY, LLC,

Defendants.

08 CV 01234  
Civil Action No.  
ECF Case

**ANSWER TO VERIFIED COMPLAINT,  
AFFIRMATIVE DEFENSES, AND  
DEMAND FOR TRIAL BY JURY**

Defendants, Milbank 2723 Webb, LLC , a Delaware limited liability company with its principal place of business located in Los Angeles, California, and Milbank Ventures, Inc., a Delaware corporation with its principal place of business located in Los Angeles, California, (collectively “Defendants”) by way of answer to the Verified Complaint filed by plaintiff, hereby say:

1. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 1 of the Verified Complaint.
2. Defendants deny the allegations set forth in Paragraph 2 of the Verified Complaint.

3. Defendants deny the allegations set forth in Paragraph 3 of the Verified Complaint. Defendant Milbank 2723 Webb, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. Defendant Milbank Ventures, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

4. Defendants admit the allegations set forth in Paragraph 4 of the Verified Complaint.

5. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 5 of the Verified Complaint.

6. Defendants deny the allegations set forth in Paragraph 6 of the Verified Complaint.

7. Defendants admit the allegations set forth in Paragraph 7 of the Verified Complaint. Defendant Milbank Ventures, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

8. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 8 of the Verified Complaint.

9. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 9 of the Verified Complaint.

10. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 10 of the Verified Complaint.

11. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 11 of the Verified Complaint.

12. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 12 of the Verified Complaint.

13. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 13 of the Verified Complaint.

14. Defendants deny the allegations set forth in Paragraph 14 of the Verified Complaint. By deed dated April 23, 2007, defendant Milbank 2723 Webb LLC took title to premises being known as and by the street number 2723 Webb Avenue, Bronx New York, also identified as Lot 169, Block 3248.

15. Defendants deny the allegations set forth in Paragraph 15 of the Verified Complaint.

16. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 16 of the Verified Complaint.

17. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 17 of the Verified Complaint.

18. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 18 of the Verified Complaint.

19. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 19 of the Verified Complaint.

20. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 20 of the Verified Complaint.

21. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 21 of the Verified Complaint.

22. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 22 of the Verified Complaint.

23. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 23 of the Verified Complaint.

24. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 24 of the Verified Complaint.

25. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 25 of the Verified Complaint.

26. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 26 of the Verified Complaint.

27. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 27 of the Verified Complaint.

28. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 28 of the Verified Complaint.

29. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 29 of the Verified Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of the Verified Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Verified Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Verified Complaint.

33. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 33 of the Verified Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Verified Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Verified Complaint.

**SEPARATE DEFENSES**

**FIRST SEPARATE DEFENSE**

Plaintiff(s)' Verified Complaint fails to state a claim upon which relief can be granted.

**SECOND SEPARATE DEFENSE**

Plaintiff(s)' Verified Complaint is barred by the applicable statute of limitations.

**THIRD SEPARATE DEFENSE**

At the time and place alleged in the Verified Complaint, Defendants violated no legal duty, whether imposed by statute, administrative code or common law, owing to plaintiff(s).

**FOURTH SEPARATE DEFENSE**

At the time and place alleged in the Verified Complaint, Defendants were not guilty of any negligence, wrongful act, or default which was a proximate cause of any injury or damages complained of by plaintiff(s).

**FIFTH SEPARATE DEFENSE**

The damages alleged by plaintiff(s) were solely and proximately caused by the alleged negligence and/or intentional conduct of third parties over whom Defendants had no direction or control.

**SIXTH SEPARATE DEFENSE**

Plaintiff(s)' Verified Complaint, in whole or in part, is barred by the doctrine of comparative negligence.

**SEVENTH SEPARATE DEFENSE**

Defendants reserve the right to move to dismiss the Verified Complaint on the grounds that it fails to set forth a cognizable legal cause of action.

**EIGHTH SEPARATE DEFENSE**

Defendants reserve the right to move to dismiss the Verified Complaint on the grounds that plaintiff(s) has failed to join a necessary party to the within action and, accordingly, the Court has no jurisdiction to grant the relief asserted by plaintiff(s).

**NINTH SEPARATE DEFENSE**

Defendants reserve the right to move to dismiss the Verified Complaint for insufficient process.

**TENTH SEPARATE DEFENSE**

That any sums or consideration paid or promised to plaintiff(s) by any person(s) or entity(ies) claimed to be liable for the injuries or damages alleged in the Verified Complaint shall reduce any judgment rendered in favor of plaintiff(s) as against Defendants to the extent of the greater of either the sums or consideration paid or promised to plaintiff(s) or the amount of the released tortfeasor's(s') equitable share(s) or the damages in accordance with General Obligation Law Section 15-108.

**ELEVENTH SEPARATE DEFENSE**

That any verdict in the within action for past, present and future medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, should be

reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part from any collateral source, in accordance with the provisions and limitations of Section 4545(c) of the CPLR.

#### **TWELFTH SEPARATE DEFENSE**

The damages allegedly sustained by plaintiff(s), to the extent plaintiff(s) may be able to prove any injuries and/or damages, said damages were proximately caused by intervening and/or superseding acts and/or fault of the plaintiff(s) and/or persons over whom the Defendants had not control or right of control and for whose actions Defendants are not liable.

#### **THIRTEENTH SEPARATE DEFENSE**

The personal injuries alleged to have been sustained by plaintiff(s) were caused in whole or in part as a result of the culpable conduct attributable to plaintiff(s), including, but not limited to, plaintiff(s)' contributory negligence and/or assumption of the risk. Pursuant to Article 14-A of the CPLR, Defendants seeks a reduction of any recovery had by plaintiff(s) in the proportion which the culpable conduct attributable to plaintiff(s) or any co-defendant bears to the culpable conduct which caused the damages.

#### **FOURTEENTH SEPARATE DEFENSE**

Upon information and belief, at the time and place alleged in the Verified Complaint, any damages or injury caused to plaintiff(s) was the result of plaintiff(s)' own unpreventable misconduct.

#### **FIFTEENTH SEPARATE DEFENSE**

To the extent that plaintiff has failed to mitigate, minimize or avoid any damages they allegedly sustained, any recovery against USB must be reduced by that amount.

**SIXTEENTH SEPARATE DEFENSE**

Defendants, at the time period alleged in the Complaint, did not control, own, maintain, operate or make special use of the instrumentality, object or portion of the premises which is the subject of this litigation, which plaintiff's claim resulted in the alleged injuries and/or damages complained of in the Complaint.

**SEVENTEENTH SEPARATE DEFENSE**

If it is shown that plaintiff was caused to sustain injuries and/or damages as a result of any substance, object or condition, claimed by plaintiff to have caused and/or contributed to the incident upon which the Complaint is based, such substance, object or condition was created, introduced or caused by persons or parties unknown to Defendants and over whom Defendants exercised no authority or control and that Defendants did not have prior notice of the existence of such substance or condition.

**EIGHTEENTH SEPARATE DEFENSE**

If plaintiff was caused to sustain injuries and/or damages as a result of any object or condition claimed by plaintiff to have caused and/or contributed to this accident, such object or condition, the existence of which is or may be denied by Defendants was in plain sight, open and obvious, and had plaintiff exercised due care, using sight and senses as a reasonable person, plaintiffs would completely avoided the alleged injuries and/or damages.

**NINETEENTH SEPARATE DEFENSE**

USB does not owe a duty of indemnity by way of common law, contract or otherwise, for any of the matters referred to in the Complaint.

**TWENTIETH SEPARATE DEFENSE**

The liability of Defendants is limited under the terms of Article 16 of the CPLR.

**TWENTY-FIRST SEPARATE DEFENSE**

Defendants reserves the right to amend their Answer to the Verified Complaint to assert such additional defenses, cross-claims or counterclaims as may become apparent during the continuing course of discovery in this matter. In addition, Defendants reserve the right to amend its Answer to assert additional affirmative defenses to the extent that the law of the State of New York changes or develops requiring such amendment.

**CROSS-CLAIM AGAINST CO-DEFENDANTS**

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., allege that if plaintiff(s) were caused to sustain damages through any carelessness, recklessness or negligence other than plaintiff(s)' own, then said damages arose in whole or in part from the acts or omissions of co-Defendants. If judgment is recovered herein by plaintiff(s) against Defendants, then Milbank 2723 Webb, LLC and Milbank Ventures, Inc., will be damaged and co-Defendants will be bound to indemnify and/or contribute to Defendants in whole or in part by reason of its responsibility for the alleged occurrence.

**ANSWER TO ALL CROSS-CLAIMS**

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., deny each and every allegation contained in any and all Cross-claims filed or to be filed against them and leaves such cross-claimants to their proofs as to all issues.

**DEMAND FOR TRIAL BY JURY**

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., hereby demand a trial by jury as to all issues.

CONNELL FOLEY LLP  
Attorneys for Defendants,  
Milbank 2723 Webb, LLC and Milbank Ventures,  
Inc.,

By:   
Matthew S. Schultz

Dated: February 4, 2008

**JUDGE LEISURE**

**08 CV 01234**

Matthew S. Schultz (MSS 1518)  
CONNELL FOLEY LLP  
888 7<sup>th</sup> Avenue, Suite 3401  
New York, New York 10106  
(212) 262-2390  
Attorneys for Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc.

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

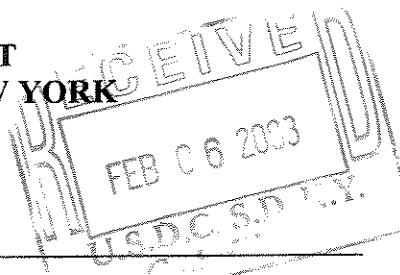
JOSE A. MENDEZ

Plaintiff,

v.

MILBANK 2723 WEBB, LLC, MILBANK VENTURES, INC. AND TGY REALTY, LLC

Defendants.

Civil Action No. 

(HONORABLE \_\_\_\_\_)

**FEDERAL RULE OF CIVIL  
PROCEDURE  
7.1 DISCLOSURE STATEMENT**

Upon information and belief, defendant, Milbank 2723 Webb, LLC, is a privately owned entity. Upon information and belief, defendant Milbank Ventures, Inc. is a privately owned entity. Further upon information and belief, no other publicly held corporation owns 10% or more of the stock of either defendant.



Matthew S. Schultz (MS1518)  
CONNELL FOLEY LLP  
Attorneys for Defendants,  
Milbank 2723 Webb, LLC and Milbank  
Ventures, Inc.  
888 7<sup>th</sup> Avenue  
New York, New York 10106  
(212) 262-2390

Dated: February 5, 2008

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Jose A. Mendez

DEFENDANTS Milbank 2723 Webb, LLC, Milbank Ventures, Inc. and TGY Realty, LLC

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael A. Ruiz, Esq., 61 Broadway, Suite 2820,  
New York, NY 10006

(212) 425-2100

## ATTORNEYS (IF KNOWN)

Matthew S. Schultz, Esq., c/o Connell Foley LLP, 85  
Livingston Avenue, Roseland, NJ 07068  
(073-525-0500)

## CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Plaintiff alleges severe personal injuries. Removal from State Court pursuant to 28 U.S.C. Section 1332.

Has this or a similar case been previously filed in SDNY at any time? No  Yes?  Judge Previously AssignedIf yes, was this case Vol  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_(PLACE AN  IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT	TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
	PERSONAL INJURY	PERSONAL PROPERTY	PERSONAL INJURY	PRODUCT LIABILITY	PROPERTY DAMAGE	LIABILITY	APPEAL 28 USC 158	STATE REAPPORTIONMENT
110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY - MED MALPRACTICE	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 410 ANTITRUST			
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT LIABILITY	[ ] 365 PERSONAL INJURY PRODUCT LIABILITY	[ ] 620 FOOD & DRUG	[ ] 423 WITHDRAWAL	[ ] 430 BANKS & BANKING			
[ ] 130 MILLER ACT	[ ] 320 ASSAULT, LIBEL & SLANDER	[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	[ ] 625 DRUG RELATED	[ ] 28 USC 157	[ ] 450 COMMERCE/ICC RATES/ETC			
[ ] 140 NEGOTIABLE INSTRUMENT	[ ] 330 FEDERAL EMPLOYERS' LIABILITY	[ ] 630 LIQUOR LAWS						
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[ ] 340 MARINE LIABILITY	[ ] 640 RR & TRUCK						
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT LIABILITY	[ ] 650 AIRLINE REGS						
[ ] 152 RECOVERY OF DEFULTED STUDENT LOANS (EXCL VETERANS)	[ ] 350 MOTOR VEHICLE	[ ] 660 OCCUPATIONAL SAFETY/HEALTH						
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 690 OTHER						
[ ] 160 STOCKHOLDERS SUITS	[ ] 360 OTHER PERSONAL INJURY							
[ ] 180 OTHER CONTRACT								
[ ] 195 CONTRACT PRODUCT LIABILITY								
[ ] 196 FRANCHISE								
	ACTIONS UNDER STATUTES							
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS						
[ ] 210 LAND CONDEMNATION	[ ] 441 VOTING	[ ] 510 MOTIONS TO VACATE SENTENCE						
[ ] 220 FORECLOSURE	[ ] 442 EMPLOYMENT	28 USC 2255						
[ ] 230 RENT LEASE & EJECTION	[ ] 443 HOUSING ACCOMMODATIONS	[ ] 530 HABEAS CORPUS						
[ ] 240 TORTS TO LAND	[ ] 444 WELFARE	[ ] 535 DEATH PENALTY						
[ ] 246 TORT PRODUCT LIABILITY	[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	[ ] 540 MANDAMUS & OTHER						
[ ] 290 ALL OTHER REAL PROPERTY	[ ] 446 AMERICANS WITH DISABILITIES - OTHER	[ ] 550 CIVIL RIGHTS						
	[ ] 440 OTHER CIVIL RIGHTS	[ ] 555 PRISON CONDITION						

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN X IN ONE BOX ONLY)

## ORIGIN

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2a. Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from (Specify District)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge Judgment
AND at least one party is a pro se litigant						

(PLACE AN X IN ONE BOX ONLY)

## BASIS OF JURISDICTION

<input type="checkbox"/> 1 U.S. PLAINTIFF	<input type="checkbox"/> 2 U.S. DEFENDANT	<input type="checkbox"/> 3 FEDERAL QUESTION (U.S. NOT A PARTY)	<input checked="" type="checkbox"/> 4 DIVERSITY
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IF DIVERSITY, INDICATE CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	<input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF [x] 1 [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	<input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	<input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF [ ] 5 [x] 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> PTF <input type="checkbox"/> DEF [ ] 2 [ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> PTF <input type="checkbox"/> DEF [ ] 4 [ ] 4	FOREIGN NATION	<input type="checkbox"/> PTF <input type="checkbox"/> DEF [ ] 6 [ ] 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Jose A. Mendez, Bronx County, New York

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Milbank 2723 Webb, LLC and Milbank Ventures, Inc.  
660 S. Figueroa Street, 24th Floor  
Los Angeles, California 90017TGY Realty, LLC  
36-08 30th Avenue  
Astoria, NY 11103

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/4/08 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
[x] YES (DATE ADMITTED Mo. 8 Yr. 2004)  
Attorney Bar Code # 1518

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)